

REMARKS

In the Office Action identified above, the Examiner rejected claims 1-7, 9-13, 17-26, 31-37, and 39-43 under 35 U.S.C. § 103(a) as being unpatentable over Kennedy, III et al. (U.S. Patent No. 6,405,033) in view of Riskin (U.S. Patent No. 4,757,267); rejected claims 10, 25, and 40 as being unpatentable over Kennedy et al. in view of Riskin and further in view of DeVito et al. (U.S. Patent No. 5,404,350); and rejected claims 8, 14-16, 27-30, 38, and 44-46 as being unpatentable over Kennedy et al. in view of Riskin and further in view of Falcon et al. (U.S. Patent Publication Number 2002/0076031).

By this amendment, Applicants propose to amend claims 1, 9, 12, 17, 28, 31, and 42. Claims 1-18 and 20-46 are pending.

Based on the following arguments, Applicants respectfully traverse the Examiner's rejections under 35 U.S.C. § 103

I. **The Rejection of Claims 1-7, 9-13, 17-26, 31-37, and 39-43 Under 35 U.S.C. § 103(a).**

Applicants respectfully traverse the rejection of claims 1-7, 9, 11-13, 17-24, 26, 31-37, 39, and 41-43 under 35 U.S.C. § 103(a) as unpatentable over Kennedy et al. in view of Riskin because the Examiner has failed to establish a prima facie case of obviousness.

To establish a prima facie case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim elements. Furthermore, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." See M.P.E.P. § 2143.01 (8th Ed., Aug. 2001), quoting *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Finally, there must be a reasonable expectation of success. See M.P.E.P. § 2143 (8th Ed. 2001), pp. 2100-122 to 127.

Claim 1 as amended¹ would recite a combination including, for example, "determining whether the call is from a test call generator." At least this element of claim 1 is in no way disclosed or suggested by Kennedy et al. Although Kennedy et al. teaches at column 9, line 66-column 10, line 2, diagnostic tests of components contained in a mobile unit ("[U]ser interface 22 and platform 24 enable an operator of mobile unit 12 to perform diagnostic tests on sensors 26, actuators 28, computing devices 30"), such diagnostic testing of a mobile unit does not teach or suggest "determining whether the call is from a test call generator" as recited in claim 1. Moreover, the "audio mode" described at column 19 of Kennedy et al. is implemented to verify proper communication between mobile unit 12 and NSC 14 (see col. 19, lines 27-

¹ No new matter is added by this amendment. See, for example, the discussion in Applicants' specification starting on page 7, line 7.

32). However, these teachings also fail to teach or suggest "determining whether the call is from a test call generator," as recited in claim 1.

Furthermore, Riskin does not cure the deficiencies of Kennedy et al. That is, Riskin fails to teach or suggest at least the steps of "determining whether the call is from a test call generator," as recited in claim 1.

For at least these reasons, Kennedy et al. and Riskin fail to teach each and every recitation of claim 1. Accordingly, Applicants respectfully request that the rejection of claim 1 under 35 U.S.C. § 103(a) be withdrawn and the claim allowed. Amended claims 17 and 31 would recite elements similar to that discussed above with regard to claim 1. Applicants therefore request the Examiner to withdraw the rejection of claims 17 and 31 for at least the same reasons discussed above with respect to claim 1.

Claims 2-7, 9, 11-13, 18-24, 26, 32-37, 39, and 41-43 depend from claims 1, 17, and 31 and thus require all the elements of claims 1, 17, and 31. As discussed above, Kennedy et al. and Riskin fail to teach at least the steps of steps of "determining whether the call is from a test call generator." Accordingly, Kennedy et al. and Riskin fail to teach all the elements of claims 2-7, 9, 11-13, 18-24, 26, 32-37, 39, and 41-43.

II. The Rejection of Claims 10, 25, and 40 Under 35 U.S.C. § 103(a).

Claims 10, 25, and 40 depend from claims 1, 17, and 31 and thus require all the elements of claims 1, 17, and 31. As explained above, amended claims 1, 17, and 31 are distinguishable from Kennedy et al. and Riskin. Accordingly, claims 10, 25, and 40 are also distinguishable from these references for at least the same reasons set forth for claims 1, 17, and 31.

Furthermore, DeVito et al. does not make up for the deficiencies of Kennedy et al. and Riskin. That is, DeVito et al. fails to teach or suggest the step of "determining whether the call is from a test call generator," as recited in claim 1. Indeed, the Examiner merely used DeVitto et al. to show redundant systems wherein if one service center is detected as having a network fault condition associated therewith, transferring or rerouting the call to a redundant center but makes no attempt to show where the reference teaches the step of "determining whether the call is from a test call generator" as recited in claim 1.

III. The Rejection of Claims 8, 14-16, 27-30, 38, and 44-46 Under 35 U.S.C. § 103(a).

Claims 8, 14-16, 27-30, 38, and 44-46 depend from claims 1, 17, and 31 and thus require all the elements of claims 1, 17, and 31. As explained, claims 8, 14-16, 27-30, 38, and 44-46 are distinguishable from Kennedy et al. and Riskin. Accordingly, claims 8, 14-16, 27-30, 38, and 44-46 are also distinguishable from these references for at least the same reasons set forth for claims 1, 17, and 31.

Furthermore, Falcon et al. does not make up for the deficiencies of Kennedy et al. and Riskin. That is, Falcon et al. fails to teach the step of "determining whether the call is from a test call generator." Indeed, the Examiner merely used Falcon et al. to show addressing the issue of abandoned calls, but does not show where the reference teaches the step of "determining whether the call is from a test call generator," as recited in claim 1.

Moreover, Applicants note additional features recited in claim 28 which are neither taught nor suggested by the applied prior art. In particular, claim 28 recites "a

test call generator connected to the network for generating test calls to verify that the switching control node activates a service logic program in response to the switching node receiving the test calls, wherein the service logic program performs the functions of determining a service center to which the call is to be routed based on the trigger number and service query responses from the calling party." Without citing any teachings in either Riskin or Falcon et al., the Examiner only relies on portions of columns 9, 10 and 19 of Kennedy et al. in asserting that the claimed test call generator is disclosed in Kennedy et al. Applicants respectfully disagree (see Office Action at page 9).

At column 9, line 66-column 10, line 2, Kennedy et al. describes diagnostic tests of components contained in a mobile unit ("[U]ser interface 22 and platform 24 enable an operator of mobile unit 12 to perform diagnostic tests on sensors 26, actuators 28, computing devices 30"). Such diagnostic testing of a mobile unit itself does not generate "test calls to verify that the switching control node activates a service logic program in response to the switching node receiving the test calls, wherein the service logic program performs the functions of determining a service center to which the call is to be routed based on the trigger number and service query responses from the calling party" as recited in claim 28. Moreover, the "audio mode" described at column 19 of Kennedy et al. is implemented to "verify proper communication between mobile unit 12 and NSC 14 (see col. 19, lines 27-32). The "audio mode," however, does not generate "test calls to verify that the switching control node activates a service logic program in response to the switching node receiving the test calls, wherein the service logic program performs the functions of determining a service center to which the call is to be

routed based on the trigger number and service query responses from the calling party" as recited in claim 28. Indeed, the Examiner alleges that Kennedy et al. teaches testing to verify proper communication between mobile unit 12 and NSC 14 (see Office Action at page 9). However, testing to verify communication between the mobile unit and the NSC does not constitute verifying "that the switching control node activates a service logic program in response to the switching node receiving the test calls, wherein the service logic program performs the functions of determining a service center to which the call is to be routed based on the trigger number and service query responses from the calling party," as recited in claim 28. At the very least, the proper activation of the service logic program "in response to test calls" should be verified. The teachings at column 19, therefore, also fail to suggest the claimed test call generator and switching node, as recited in claim 28. Claim 28 is thus allowable for this additional reason.

IV. Conclusion

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-46 in condition for allowance. Applicants submit that the proposed amendments of claims 1, 9, 17, 28, and 31 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicants' invention. It is respectfully submitted that the entering of the Amendment would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Finally, applicants submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 07-2347.

Respectfully submitted,
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Dated: October 18, 2004

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